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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

U.S. DISTRICT COURT — N.D. OF N.Y.
FILED
OCT - 9 1998
AT _____ O'CLOCK *JMB*
Lawrence K. Baerman, Clerk — Syracuse

UNITED STATES OF AMERICA,

Plaintiff,

v.

County of Oswego; Oswego Valley Solid
Refuse Disposal District;
City of Fulton;
Village of Phoenix; Town of Granby;
Town of Schroepfel; Town of Volney;
Armstrong World Industries, Inc.;
Miller Brewing Company;
Alcan Aluminum Corporation;
International Paper Company;
Owens-Brockway Glass Container Inc.;
The Black Clawson Company;
AlliedSignal Inc.;
American National Can Company;
American Standard, Inc.; AMF, Inc.;
Ashland Chemical Company, Division of
Ashland Inc.; Boise Cascade Corp.;
Charles W. Breneman Company;
Bristol-Myers Squibb Company; BCE/CH
Holdings Corp. formerly known as The
Case-Hoyt Corporation; Champion
International Corporation;
E.I. duPont de Nemours and Company;
Floquil Polly S Color Corporation;
GAF Corporation; General Electric
Company; Jones Chemicals, Inc.;
Masonite Corporation; Hasbro, Inc.;
Monsanto Company; Sonoco Flexible
Packaging, Inc. f.k.a Engraph, Inc.
a.k.a. Morrill Press;
Niagara Mohawk Power Corporation;
Pfizer, Inc.; Revere Ware Corporation;
Rotron, Inc.; Schenectady International,
Inc.; Sealright Manufacturing Fulton,
Inc.; Shell Oil Company;
State University of New York,

Defendants.

CIVIL ACTION NO.

98-CV-0994

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02-99-0002

U.S. DISTRICT COURT
N.D. OF N.Y.
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OCT 24 1998

CONSENT DECREE

LAWRENCE K. BAERMAN - CLERK
ALBANY

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CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606, 9607.

B. The United States in its complaint seeks, inter alia: (1) reimbursement of costs incurred by EPA and the Department of Justice for response actions at the Volney Landfill Superfund Site in the Town of Volney, Oswego County, New York together with accrued interest; and (2) performance of studies and response work by the defendants at the Site consistent with the National Contingency Plan, 40 C.F.R. Part 300 (as amended) ("NCP").

C. In accordance with the NCP and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the State of New York (the "State") on September 24, 1996 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Source Control Operable Unit at the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the U.S. Department of the Interior and the National Oceanic and Atmospheric Administration on July 26, 1991 of negotiations with potentially responsible parties regarding

the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint, nor do they acknowledge that the release or threatened release of hazardous substance(s) at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on June 1, 1984.

G. In response to a release or a substantial threat of a release of a hazardous substance(s) at or from the Site, the State commenced, in 1986, a Remedial Investigation and Feasibility Study ("RI/FS") for the Site pursuant to the NCP.

H. The State completed the RI/FS Report for the Source Control Operable Unit ("OU1") in May 1987.

I. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, the State published notice of the completion of the RI/FS and of the proposed plan for remedial action on May 26, 1987, in a major local newspaper of general circulation. The State provided an opportunity for written and oral comments from the public on the proposed plan

for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

J. The decision by EPA on the remedial action to be implemented at the Site is embodied in a final Record of Decision ("ROD"), executed on July 31, 1987, a Post-Decision Document of Sample Results and Selected Remedy, Volney Landfill Site, Source Control Operable Unit ("PDD") issued September 29, 1989, and an Explanation of Significant Differences ("ESD") published in August 1997. The State had a reasonable opportunity to review and comment on the ROD, the PDD and the ESD, on each of which the State has given its concurrence.

K. The ROD included requirements, inter alia, for the supplemental capping of the landfill side slopes, the installation of a leachate collection system and slurry wall around the northern and southwestern sections of the landfill, and the on-site or off-site treatment of leachate. The ROD also included a responsiveness summary to the public comments. Notice of the final plan was published in accordance with Section 117(b) of CERCLA.

L. Subsequent to the signing of the ROD, EPA learned that a quality assurance/quality control ("QA/QC") review of the analytical data obtained as part of the RI/FS had not been performed. Following a QA/QC review of the data, the State concluded that the data were invalid. EPA subsequently had a contractor resample groundwater monitoring wells, surface water, sediments, and

leachate at the Site. The analytical data compiled by EPA's contractor were incorporated into the PDD.

M. After the ROD was signed and during the evaluation process culminating in the PDD, information regarding the remedy selected in the ROD and confirmed in the PDD was made available to EPA by the public. Based upon this information, EPA determined in the PDD that, during the design phase for the remediation of OU1, it would conduct leachate generation and treatability studies to evaluate the effectiveness of the slurry walls proposed in the ROD as well as the alternatives of on- or off-site leachate treatment. Some of these studies which were conducted by an EPA contractor were completed in May 1991.

N. After the completion of the leachate generation and treatability studies in May 1991, however, EPA determined that additional studies and additional hydrogeological data were required for the design of the remedy proposed in the ROD and the PDD. These studies and data were developed in a Supplemental Pre-Remedial Design Study ("SPRDS") which was conducted by certain potentially responsible parties pursuant to the requirements of an Administrative Order on Consent issued by EPA on June 28, 1993.

O. One of the components of the 1987 ROD was to perform an RI/FS for Operable Unit No. 2 ("OU2"), the Contamination Pathways ("CP"). Certain potentially responsible parties agreed to perform a CP RI/FS in accordance with an Administrative Order on Consent ("AOC"), which was executed by EPA on September 28, 1990. In accordance with the terms of the CP AOC, the County of Oswego

submitted a CP Work Plan on September 20, 1990 for EPA review. Several of the tasks which were to be performed as part of the CP RI/FS work plan were subsequently performed as part of the SPRDS work plan under the June 1993 AOC.

P. Based upon a review of the data developed during the SPRDS, EPA determined that modifications to the remedy proposed in the ROD and the PDD should be made. These changes are described in the ESD. EPA has determined that, due to Site conditions, the remedy for OU1 should not include installation of a slurry wall or extension of the existing leachate collection system. Therefore, the selected remedy, as modified by the ESD, includes supplemental capping of the landfill side slopes, continued leachate collection, groundwater extraction on an as-needed basis in accordance with the methodology in the EPA-approved Remedial Design Work Plan, off-Site leachate and groundwater treatment, and long-term monitoring.

Q. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Owner Settling Defendant if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, the Remedial Action selected by the ROD, the PDD, the ESD, and the Work to be performed by the Owner Settling Defendant shall constitute a response action taken or ordered by the President.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent

Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendant's responsibilities under this Consent Decree.

3. Owner Settling Defendant shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and shall condition all contracts entered into to perform the Work upon performance of the

Work in conformity with the terms of this Consent Decree. Owner Settling Defendant or its contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Owner Settling Defendant shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Owner Settling Defendant within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. "Working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"DOI" shall mean the United States Department of Interior and any successor departments, agencies or instrumentalities of the United States.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"ESD" shall mean the Explanation of Significant Differences issued by EPA in August, 1997. The ESD is attached as Appendix G.

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs, beginning on the date of lodging of this Consent Decree, in reviewing or developing plans, reports and other items with respect to the response actions required by the Record of Decision, as amended, and this Consent Decree, verifying the Work, or otherwise implementing, overseeing, or enforcing this Consent Decree, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Sections VII, IX (including, but not limited to, the cost of attorney time and any monies paid to secure access and/or to secure or implement Institutional Controls), XV, and Paragraph 79 of

Section XXI.

"Institutional Controls" shall mean land and/or water use restrictions which may include, but need not be limited to, restrictions in the form of contractual agreements, deed restrictions, state or local laws, regulations, ordinances or other governmental action.

"Interest" shall mean interest at the rate specified for interest on investments of the Hazardous Substance Superfund established under Subchapter A of Chapter 98 of Title 26 of the U.S. Code, compounded on October 1 of each year, in accordance with 42 U.S.C. § 9607(a).

"NOAA" shall mean the National Oceanic and Atmospheric Administration, an agency of the United States Department of Commerce, and any successor departments or agencies of the United States;

"National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

"Natural Resource Damages" or "NRD" shall mean damages, including costs of damages assessment, recoverable under Section 107 of CERCLA or any other provisions of federal law, for injury to, destruction of, or loss of any and all natural resources, for which the DOI is trustee, resulting from a release of hazardous substances from the Source Control Operable Unit.

"NYSDEC" shall mean the New York State Department of

Environmental Conservation and any successor departments or agencies of the State.

"Non-owner Settling Defendants" shall mean the governmental and private party Settling Defendants listed in Appendix D, and each of those Settling Defendant's parents, successors, and assigns, solely to the extent that the alleged liability of such parent, successor, or assign is derivative from and arises out of the same transactions and occurrences which gave rise to the potential liability of the Settling Defendant.

"OU1" shall mean the Source Control Operable Unit at the Site as described in the Record of Decision, as amended.

"OU2" shall mean the Contamination Pathways Operable Unit at the Site.

"Operation and Maintenance" or "O & M" shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree and the Statement of Work (SOW).

"Owner Settling Defendant" shall mean the Settling Defendant listed in Appendix E.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper case letter.

"Parties" shall mean the United States and the Settling Defendants.

"Past Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid

at or in connection with the Site through the date of lodging of this Consent Decree, plus Interest on all such costs.

"Performance Standards" shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth in the ROD, the PDD, the ESD, and the SOW.

"Plaintiff" shall mean the United States.

"Post-Decision Document" ("PDD") shall mean the "Post-Decision Document of Sample Results and Selected Remedy, Volney Landfill Site, Source Control Operable Unit" (OUL), signed by the Acting Regional Administrator, EPA Region II, on September 29, 1989. The PDD is attached as Appendix F.

"RCRA" shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

"Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Source Control Operable Unit at the Volney Landfill Site signed on July 31, 1987, by the Regional Administrator, EPA Region II, and all attachments thereto. The ROD (without its attachments) is attached as Appendix A. When used in this Consent Decree in a context together with the terms "PDD" and "ESD," "ROD" refers solely to the July 31, 1987 Record of Decision. In all other contexts, "ROD" is used collectively to refer to the July 31, 1987 Record of Decision, as modified by the PDD and the ESD.

"Remedial Action" shall mean those activities, except for Operation and Maintenance, to be undertaken by the Owner Settling

Defendant to implement the RCD (Appendix A), the PDD (Appendix F), and the ESD (Appendix G), in accordance with the SOW and the Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 12 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Owner Settling Defendant to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Work Elements" shall mean the construction of the supplemental capping of the landfill side slopes ("Remedial Work Element I"); and the certification of the initial operation of groundwater extraction wells, if required, and the submission of an approvable groundwater extraction contingency plan ("Remedial Work Element II"), as described in the Statement of Work, and in accordance with the methodology in the Remedial Design Work Plan.

"Section" shall mean a portion of this Consent Decree identified by a roman numeral.

"Settling Defendants" shall mean those Parties identified in Appendices D (Non-owner Settling Defendants) and E (Owner Settling Defendant).

"Site" shall mean the Volney Landfill Superfund Site, consisting of two operable units, the Source Control Operable Unit (OU1), encompassing approximately 55 acres, located at Silk Road in the Town of Volney, Oswego County, New York and depicted generally on the map attached as Appendix C, and the Contamination Pathways Operable Unit (OU2).

"State" shall mean the State of New York.

"Statement of Work" or "SOW" shall mean the statement of work for implementation of the Remedial Design, Remedial Action, and Operation and Maintenance for OU1 at the Site, as set forth in Appendix B to this Consent Decree and any modifications made in accordance with this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Owner Settling Defendant to supervise and direct the implementation of the Work under this Consent Decree.

"Supplemental Institutional Controls" shall mean Institutional Controls (other than those required pursuant to Paragraphs 23 and 24 below) that are developed, requested, or approved by EPA for one or more of the following purposes: (1) to ensure non-interference with the performance, operation and maintenance of any response actions at or pertaining to the Site, other than the ROD remedy; (2) to ensure the integrity and effectiveness of any response actions at or pertaining to the Site, other than the ROD remedy; and (3) to otherwise ensure the protection of public health, welfare, or the environment at and in connection with the Site.

"Trustee" shall mean only DOI in its capacity as one of the

federal trustees for natural resources of the United States.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities Owner Settling Defendant is required to perform under this Consent Decree (including the securing and implementation of Institutional Controls), except those required by Section XXV (Retention of Records).

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health or welfare or the environment at the Site by the design and implementation of response actions at the Site by the Owner Settling Defendant, to reimburse response costs of the Plaintiff, and to resolve the claims of Plaintiff against Settling Defendants as provided in this Consent Decree.

6. Commitments by Owner and Non-owner Settling Defendants

a. Owner Settling Defendant shall finance and perform the Work in accordance with this Consent Decree, the ROD, the SOW, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Owner Settling Defendant and approved by EPA pursuant to this Consent Decree. The Owner, Settling Defendant shall also reimburse the United States for Past

Response Costs, Future Response Costs, and Natural Resource Damages, as provided in this Consent Decree. The Non-owner Settling Defendants will contribute funds to finance the Work and to reimburse the United States for Past Response Costs, Future Response Costs, and Natural Resource Damages in accordance with their agreements with Owner Settling Defendant as described in subparagraph c., below.

b. The obligations of Settling Defendants under this Consent Decree to reimburse Past Response Costs are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to fulfill such obligations, the remaining Settling Defendants shall complete all such requirements.

c. The Owner Settling Defendant has entered into two separate agreements with governmental and private party Non-owner Settling Defendants (Appendix D identifies Non-owner Settling Defendants as either governmental or private party Non-owner Settling Defendants) in which Settling Defendants agree among themselves that: (i) the Owner Settling Defendant will be responsible for performance of the Work, the reimbursement to the United States for Past Response Costs and Future Response Costs, and payment of Natural Resource Damages, all as required by the terms of this Consent Decree; and (ii) the Non-owner Settling Defendants will contribute funds to Owner Settling Defendant that will be used exclusively for the performance of the Work, the reimbursement to the United States for Past Response Costs and Future Response Costs, and payment of Natural Resource Damages, as

required by this Consent Decree. The United States is not a party to these agreements among Settling Defendants.

7. Compliance With Applicable Law

All activities undertaken by Owner Settling Defendant pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and regulations. Owner Settling Defendant must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD and the SOW. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be deemed to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-site requires a federal or state permit or approval, Owner Settling Defendant shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Owner Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

9. Notice to Successors-in-Title

a. With respect to any property owned or controlled by the Owner Settling Defendant that is located within the Site, within forty-five (45) days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder's Office or Registry of Deeds or other appropriate office, Oswego County, State of New York, which shall provide notice to all successors-in-title that the property is part of the Site, that EPA selected a remedy for the Site on July 31, 1987, as modified September 29, 1989 and August 1997, and that a Consent Decree requiring the implementation of the remedy by Owner Settling Defendant exists. Such notice shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. Such notice shall be filed within ten (10) days of EPA's approval of the notice. The Owner Settling Defendant shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

b. At least thirty (30) days prior to the conveyance of any interest in property located within the Site, including, but not limited to, fee interests, leasehold interests, and mortgage interests, the Owner Settling Defendant shall give the grantee

written notice of this Consent Decree and any instrument by which an interest in real property has been conveyed that confers a right of access to the Site or any other property (hereinafter referred to as "access easements"), and any Institutional Controls in the form of deed restrictions that have been filed with respect to the property pursuant to Section IX (Access and Institutional Controls). At least 30 days prior to such conveyance, the Owner Settling Defendant shall also give written notice to EPA and the State of the proposed conveyance, including the name and address of the grantee, and the date on which notice of the Consent Decree and access easements or Institutional Controls in the form of deed restrictions was given to the grantee.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including its obligations to provide or secure access and Institutional Controls, as well as abide by such Institutional Controls, pursuant to Section IX (Access and Institutional Controls), shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY OWNER SETTLING DEFENDANT

10. Selection of Supervising Contractor.

a. All aspects of the Work to be performed by Owner Settling Defendant pursuant to Sections VI (Performance of the Work

by Owner Settling Defendant), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the direction and supervision of the Supervising Contractor, the selection of which shall be subject to disapproval by EPA. Owner Settling Defendant's Supervising Contractor, as well as all other contractors and subcontractors who engage in the "practice of engineering" at the Site on behalf of Owner Settling Defendant, as the "practice of engineering" is defined at Section 7201 of the New York State Education Law, must comply with all applicable New York State legal requirements regarding the practice of professional engineering within the State of New York, including, but not limited to, all applicable requirements of the New York State Education Law and Articles 15 and 15-A of the Business Corporation Law. Within 10 days after the lodging of this Consent Decree, Owner Settling Defendant shall notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. If EPA has questions concerning the qualifications of any such contractor it shall so communicate to the Owner Settling Defendant by telephone or otherwise. EPA will issue a notice of disapproval or an authorization to proceed. If at any time thereafter, Owner Settling Defendant proposes to change a Supervising Contractor, Owner Settling Defendant shall give such notice to EPA and must obtain an authorization to proceed from EPA before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

b. If EPA disapproves a proposed Supervising Contractor, EPA will notify Owner Settling Defendant in writing. Owner Settling Defendant shall submit to EPA a list of contractors (which does not include the contractor previously disapproved by EPA), including the qualifications of each contractor, that would be acceptable to it within 30 days of receipt of EPA's disapproval of the contractor previously proposed. EPA will provide written notice of the names of any contractor(s) that it disapproves and an authorization to proceed with respect to any of the other contractors. Owner Settling Defendant may select any contractor from that list that is not disapproved and shall notify EPA of the name of the contractor selected within 21 days of EPA's authorization to proceed.

c. If EPA fails to provide written notice of its authorization to proceed or disapproval as provided in this Paragraph and this failure prevents the Owner Settling Defendant from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Owner Settling Defendant may seek relief under the provisions of Section XVIII (Force Majeure) hereof.

11. Remedial Design.

a. Within sixty (60) days after EPA's issuance of an authorization to proceed pursuant to Paragraph 10, Owner Settling Defendant shall submit to EPA and the State a work plan for the design of the Remedial Action at the Site ("Remedial Design Work Plan" or "RD Work Plan"). The Remedial Design Work Plan shall

provide for design of the remedy set forth in the ROD, in accordance with the SOW, and for achievement of the Performance Standards and other requirements set forth in the ROD, this Consent Decree and/or the SOW. Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. Within 60 days after EPA's issuance of an authorization to proceed, the Owner Settling Defendant also shall submit to EPA and the State a Health and Safety Plan for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Design Work Plan shall include plans and schedules for implementation of all remedial design and pre-design tasks identified in the SOW, including, but not limited to, plans and schedules for the completion of: (1) design sampling and analysis plan (including, but not limited to, a Remedial Design Quality Assurance Project Plan (RD QAPP) in accordance with Section VIII (Quality Assurance, Sampling, and Data Analysis)); (2) a Pre-design Work Plan; (3) a preliminary design submittal; (4) an intermediate design submittal, if required by EPA; (5) a pre-final/final design submittal; and (6) a Construction Quality Assurance Plan. In addition, the Remedial Design Work Plan shall include a schedule for completion of the Remedial Action Work Plan.

c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field

activities to EPA and the State, Owner Settling Defendant shall implement the Remedial Design Work Plan. The Owner Settling Defendant shall submit to EPA and the State all plans, submittals and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Owner Settling Defendant shall not commence further Remedial Design activities at the Site prior to approval of the Remedial Design Work Plan.

d. The preliminary design submittal shall include, at a minimum, the following: (1) design criteria; (2) results of additional field sampling and pre-design work; (3) project delivery strategy; (4) preliminary plans, drawings and sketches; (5) required specifications in outline form; and (6) preliminary construction schedule.

e. The intermediate design submittal, if required by EPA or if independently submitted by the Owner Settling Defendant, shall be a continuation and expansion of the preliminary design. Any value engineering proposals must be identified and evaluated during this review.

f. The pre-final/final design submittal shall include, at a minimum, the following: (1) final plans and specifications; (2) Operation and Maintenance Plan; (3) Construction Quality Assurance Project Plan (CQAPP); (4) Field Sampling Plan (directed at measuring progress towards meeting Performance Standards); and (5) Contingency Plan. The CQAPP, which shall detail the approach to

quality assurance during construction activities at the Site, shall specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project.

12. Remedial Action.

a. Within 120 days after approval of the pre-final/final design submittal, Owner Settling Defendant shall award a contract for Remedial Action for OUI at the Site. Within 60 days after the award of the Remedial Action contract, Owner Settling Defendant shall submit to EPA and the State, a work plan for the performance of the Remedial Action at the Site ("Remedial Action Work Plan"). The Remedial Action Work Plan shall provide for construction and implementation of the remedy set forth in the ROD, as modified, and achievement of the Performance Standards, in accordance with this Consent Decree, the ROD, the SOW, and the design plans and specifications developed in accordance with the Remedial Design Work Plan and approved by EPA. Upon its approval by EPA, the Remedial Action Work Plan shall be incorporated into and become enforceable under this Consent Decree. At the same time as it submits the Remedial Action Work Plan, Owner Settling Defendant shall submit to EPA and the State a Health and Safety Plan for field activities required by the Remedial Action Work Plan which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

b. The Remedial Action Work Plan shall include the

following: (1) the schedule for completion of the Remedial Action; (2) schedule for selection of the contractor; (3) schedule for developing and submitting other required Remedial Action plans; (4) methodology for implementation of the Construction Quality Assurance Plan; (5) a groundwater monitoring plan; (6) methods for satisfying permitting requirements; (7) methodology for implementation of the Operation and Maintenance Plan; (8) methodology for implementation of the Contingency Plan; (9) tentative composition of the Remedial Action team including, but not limited to, the Supervising Contractor; (10) construction quality control plan (by constructor); (11) procedures and plans for the decontamination of equipment and the disposal of contaminated materials; and (12) planting and management of the supplemental capping of the landfill side slopes in a fashion that will benefit migratory birds and that is approved by the Federal Aviation Administration (due to the proximity of the southern slope of the landfill to the airport). The Remedial Action Work Plan also shall include a schedule for implementation of all Remedial Action tasks identified in the final design submittal.

c. Upon approval of the Remedial Action Work Plan by EPA, after a reasonable opportunity for review and comment by the State, Owner Settling Defendant shall implement the activities required under the Remedial Action Work Plan. The Owner Settling Defendant shall submit to EPA and the State all plans, submittals, or other deliverables required under the approved Remedial Action Work Plan in accordance with the approved schedule for review and approval

pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Owner Settling Defendant shall not commence physical Remedial Action activities at the Site prior to approval of the Remedial Action Work Plan.

13. The Owner Settling Defendant shall continue to implement the Remedial Action and O&M until the Performance Standards are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the SOW or Related Work Plans.

a. Prior to EPA's acceptance of Owner Settling Defendant's certification of completion of the Work pursuant to Section XIV, if EPA determines that modification to the work specified in the SOW and/or in work plans developed pursuant to the SOW is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD, as modified, EPA may require the Owner Settling Defendant to incorporate such modification in the SOW and/or such work plans and to perform the modified work. Provided, however, that a modification may only be required pursuant to this Paragraph to the extent that it is consistent with the scope of the remedy selected in the ROD, as modified.

b. For the purposes of this Paragraph 14 and Paragraph 47 only, the "scope of the remedy selected in the ROD, as modified" or "Modified Remedy" is: (i) the construction of a supplemental cap on the landfill side slopes which satisfies the New York State standards contained in 6 NYCRR, Part 360; (ii) off-site treatment

and disposal of the collected leachate; (iii) continued use of the existing leachate collection system; (iv) groundwater extraction wells that will be operated initially, if required, and thereafter, as needed on an intermittent basis, in accordance with the methodology in the groundwater extraction contingency plan in the Remedial Design Work Plan; and (v) a long-term monitoring program.

c. If Owner Settling Defendant objects to any modification determined by EPA to be necessary pursuant to this Paragraph, it may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 64 (record review). The SOW and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Owner Settling Defendant shall implement any work required by any modifications incorporated in the SOW and/or in work plans developed pursuant to the SOW in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Owner Settling Defendant acknowledges and agrees that nothing in this Consent Decree, the SOW, or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the SOW and the Work Plans will achieve the Performance Standards.

16. Owner Settling Defendant shall, prior to any off-Site

shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

a. The Owner Settling Defendant shall include in the written notification the following information, where available:

(1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. The Owner Settling Defendant shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Owner Settling Defendant following the award of the contract for Remedial Action construction. The Owner Settling Defendant shall provide the information required by Paragraph 16.a. as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

VII. REMEDY REVIEW

17. Periodic Review. Owner Settling Defendant shall conduct

any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment at least every five years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

19. Owner Settling Defendant shall use quality assurance, quality control, and chain of custody procedures for all treatability, design, compliance and monitoring samples in accordance with "EPA Requirements for Quality Assurance Project Plans for Environmental Data Operation" [EPA QA/R5; "Preparing Perfect Project Plans," (EPA/600/9-88/087)], and subsequent amendments to such guidelines upon notification by EPA to Owner Settling Defendant of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Owner Settling Defendant shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") that is consistent with the SOW, the NCP and applicable guidance documents. If relevant to the proceeding, the Parties agree that validated sampling data

generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Owner Settling Defendant shall establish and enforce contractual terms to ensure that EPA and State personnel and their authorized representatives are allowed access at reasonable times to all laboratories utilized by Owner Settling Defendant in implementing this Consent Decree. In addition, Owner Settling Defendant shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Owner Settling Defendant shall ensure that the laboratories it utilizes for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Accepted EPA methods consist of those methods which are documented in the "Contract Lab Program Statement of Work for Inorganic Analysis" (Revision No. 11, 1992) and the "Contract Lab Program Statement of Work for Organic Analysis" (Revision No. 9, 1994), and any amendments made thereto during the course of the implementation of this Decree. Owner Settling Defendant shall ensure that all laboratories it uses for analysis of samples taken pursuant to this Consent Decree participate in an EPA or EPA-equivalent QA/QC program. Owner Settling Defendant shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA.

20. Upon request, the Owner Settling Defendant shall allow split

or duplicate samples to be taken by EPA and the State or their authorized representatives. Owner Settling Defendant shall notify EPA not less than 28 days in advance of any sample collection activity unless shorter notice is agreed to by EPA. In addition, EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow the Owner Settling Defendant to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Owner Settling Defendant's implementation of the Work.

21. Owner Settling Defendant shall submit to EPA copies of the verified results of all sampling and/or tests or other data obtained or generated by or on behalf of Owner Settling Defendant with respect to the Site and/or the implementation of this Consent Decree within 30 days of the date when those results or data become available to Owner Settling Defendant, unless EPA agrees otherwise. At any time prior to the availability of verified results, if EPA so requests, Owner Settling Defendant shall provide raw analytical data to EPA.

22. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

23. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent

Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, provide the United States, the State, and their representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, the following activities:

- i. Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;
- iv. Obtaining samples;
- v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
- vi. Implementing the Work pursuant to the conditions set forth in Paragraph 79 of this Consent Decree;
- vii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV (Access to Information);
- viii. Assessing Settling Defendants' compliance with this Consent Decree; and
- ix. Determining whether the Site or other property is

being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;

b. commencing on the date of lodging of this Consent Decree, refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the integrity or protectiveness of the remedial measures to be implemented pursuant to this Consent Decree. Such restrictions include, but are not limited to: (i) not installing or operating wells for extraction of groundwater for any use within the Source Control Operable Unit, and within those areas between the landfill facility boundary and Bell Creek as depicted on the map attached as Appendix C, or at any location that would interfere with the remedial action required to be implemented by this Consent Decree; and (ii) after the construction of the supplemental cap on the landfill side slopes is completed and except as required for O&M, not engaging in any digging, excavation, construction, or other activities that could or would interfere with, or adversely affect, the integrity of the cap (existing top cap and supplemental side slopes); and

c. if EPA so requests, execute and record in the Recorder's Office or Registry of Deeds or other appropriate land records office of Oswego County, State of New York, an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed

in Paragraph 23(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 23(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within 45 days of EPA's request, submit to EPA for review and approval with respect to such property:

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 45 days of EPA's approval and acceptance of the easement, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely, record the easement with the Recorder's Office or Registry of Deeds or other appropriate office of Oswego County. Within 30

days of recording the easement, such Settling Defendants shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

24. If the Site, or any other property where access and/or land/water use restrictions are needed to implement any response action provided by this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants, Owner Settling Defendant shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Owner Settling Defendant, as well as for the United States on behalf of EPA, and the State, as well as their representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 23(a) of this Consent Decree;

b. an agreement, enforceable by the Owner Settling Defendant and the United States, to abide by the obligations and restrictions established by Paragraph 23(b) of this Consent Decree, or that are otherwise necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial actions to be performed pursuant to this Consent Decree; and

c. if EPA so requests, the execution and recordation in the Recorder's Office or Registry of Deeds or other appropriate land records office of Oswego County, State of New York,

of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree, including, but not limited to, those activities listed in Paragraph 23(a) of this Consent Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 23(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to one or more of the following persons, as determined by EPA: (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and/or (iii) other appropriate grantees. Within 45 days of the date of a request therefor by EPA, Owner Settling Defendant shall submit to EPA for review and approval with respect to such property:

i. A draft easement that is enforceable under the laws of the State of New York, free and clear of all prior liens and encumbrances (except as approved by EPA), and acceptable under the Attorney General's Title Regulations promulgated pursuant to 40 U.S.C. § 255; and

ii. a current title commitment or report prepared in accordance with the U.S. Department of Justice Standards for the Preparation of Title Evidence in Land Acquisitions by the United States (1970) (the "Standards").

Within 45 days of EPA's approval and acceptance of the easement, Owner Settling Defendant shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment or report to affect the title adversely,

the easement shall be recorded with the Recorder's Office or Registry of Deeds or other appropriate office of Oswego County. Within 30 days of the recording of the easement, Owner Settling Defendant shall provide EPA with final title evidence acceptable under the Standards, and a certified copy of the original recorded easement showing the clerk's recording stamps.

25. For purposes of Paragraph 24 of this Consent Decree, "best efforts" includes the payment of reasonable sums of money in consideration of access, access easements, land/water use restrictions, and/or restrictive easements. If any access or land/water use restriction agreements required by Paragraphs 24(a) or 24(b) of this Consent Decree are not obtained within 45 days of the date of entry of this Consent Decree, or any access easements or restrictive easements required by Paragraph 24(c) of this Consent Decree are not submitted to EPA in draft form within 45 days of the date of EPA's request therefor, Owner Settling Defendant shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Owner Settling Defendant has taken to attempt to comply with Paragraph 24 of this Consent Decree. The United States may, as it deems appropriate, assist Owner Settling Defendant in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land. Owner Settling Defendant shall reimburse the United States in accordance with the procedures in Section XVI (Reimbursement of Response Costs), for all costs incurred by the United States in

obtaining such access and/or land/water use restrictions including, but not limited to, the cost of attorney time and the amount of monetary consideration paid.

26. If EPA determines that land and/or water use restrictions in the form of state or local laws, regulations, ordinances or other governmental action are needed to implement the ROD remedy, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Owner Settling Defendant shall cooperate with EPA's efforts to secure such governmental controls.

27. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

28. In addition to any other requirement of this Consent Decree, Owner Settling Defendant shall submit to EPA and the State written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include a summary of all results of sampling and tests and all other data received or generated by Owner Settling Defendant or its contractors or agents in the previous month; (c) identify all work plans, plans and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans, which are scheduled for the next six weeks and

provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts and Pert charts; (e) include information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work, and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Owner Settling Defendant has proposed to EPA or that have been approved by EPA; and (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next six weeks. Owner Settling Defendant shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Owner Settling Defendant pursuant to Paragraph 47.c. of Section XIV (Certification of Completion). If requested by EPA, Owner Settling Defendant shall also provide briefings for EPA to discuss the progress of the Work.

29. Owner Settling Defendant shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, data collection and implementation of work plans, no later than seven days prior to the performance of the activity.

30. Upon the occurrence of any event during performance of the Work that Owner Settling Defendant is required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning

and Community Right-to-know Act (EPCRA), Owner Settling Defendant shall within 24 hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the Chief of the New York Remediation Branch of the Emergency and Remedial Response Division, EPA Region II. These reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

31. Within 20 days of the onset of an event of the type referred to in the preceding paragraph, Owner Settling Defendant shall furnish to Plaintiff a written report, signed by the Owner Settling Defendant's Project Coordinator, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within 30 days of the conclusion of such an event, Owner Settling Defendant shall submit a report setting forth all actions taken in response thereto. If appropriate, both reports required under this paragraph may be consolidated in a single document.

32. Owner Settling Defendant shall submit all plans, reports, and data required by Section VI, above, the SOW, the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans to EPA in accordance with the schedules set forth in Section VI, above, the SOW and such approved plans. Owner Settling Defendant shall simultaneously submit copies of all such plans, reports and data to the State, in accordance with the requirements

of Section XXVI, below.

33. All reports and other documents submitted by Owner Settling Defendant to EPA (other than the monthly progress reports referred to above) which purport to document Owner Settling Defendant's compliance with the terms of this Consent Decree shall be signed by the Project Coordinator or other authorized representative of the Owner Settling Defendant.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

34. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Owner Settling Defendant modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Owner Settling Defendant at least one notice of deficiency and an opportunity to cure within 14 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate a bad faith lack of effort to submit an acceptable deliverable.

35. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 34(a), (b), or (c),

Owner Settling Defendant shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 34(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

36. a. Upon receipt of a notice of disapproval pursuant to Paragraph 34(d), Owner Settling Defendant shall, within 14 days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the 14-day period or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 37 and 38.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 34(d), Owner Settling Defendant shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Owner Settling Defendant of any liability for stipulated penalties under Section XX (Stipulated Penalties).

37. In the event that a resubmitted plan, report or other item,

or portion thereof, is disapproved by EPA, EPA may again require the Owner Settling Defendant to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Owner Settling Defendant shall implement any such plan, report, or item as modified or developed by EPA, subject only to its right to invoke the procedures set forth in Section XIX (Dispute Resolution).

38. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Owner Settling Defendant shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Owner Settling Defendant invokes the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, or if Owner Settling Defendant does not challenge EPA's disapproval or modification by invoking the dispute resolution procedures set forth in Section XIX, stipulated penalties shall accrue for such violation, as provided in Section XX, from the date on which the initial submission was originally required.

39. All plans, reports, and other items required to be submitted to EPA under this Consent Decree shall, upon approval or

modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

40. Within 20 days of lodging this Consent Decree, Owner Settling Defendant and EPA will notify each other, in writing, of the name, address and telephone number of its respective designated Project Coordinators and Alternate Project Coordinators. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least 5 working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The Owner Settling Defendant's Project Coordinator shall be subject to disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Owner Settling Defendant's Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. He or she may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

41. Plaintiff may designate other representatives, including, but not limited to, EPA and State employees, and federal and State contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's

Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator or Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

42. The Owner Settling Defendant's Project Coordinator shall be available to meet with EPA at EPA's request.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

43. Within 30 days of entry of this Consent Decree, Owner Settling Defendant shall establish and maintain financial security in the amount of \$7,000,000 in one or more of the following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit equaling the total estimated cost of the Work;
- (c) A trust fund; or
- (d) A demonstration that the Owner Settling Defendant satisfies the requirements of 40 C.F.R. Part 258.74(f).

44. If Owner Settling Defendant seeks to demonstrate its ability to complete the Work by means of the financial test

pursuant to Paragraph 43(d), it shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 258.74(f) annually, on the anniversary of the effective date of this Consent Decree. In the event that EPA determines at any time that the financial assurances provided pursuant to this Section are inadequate, Owner Settling Defendant shall, within 30 days of receipt of notice of EPA's determination, obtain and submit to EPA for approval additional financial assurances satisfying the requirements of this Section XIII. Owner Settling Defendant's inability to demonstrate financial ability to complete the Work shall not excuse performance of any activities required under this Consent Decree.

45. If Owner Settling Defendant can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 43 above after entry of this Consent Decree, Owner Settling Defendant may, on any anniversary date of entry of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Owner Settling Defendant shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Owner Settling Defendant may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

46. Owner Settling Defendant may change the form of financial

assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Owner Settling Defendant may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

47. a. Construction of Supplemental Landfill Side Slope Cap
("Remedial Work Element I")

(i) Within 90 days after Owner Settling Defendant concludes that all construction of the supplemental landfill side slope cap has been fully performed in accordance with the EPA-approved Remedial Design, Owner Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Owner Settling Defendant, EPA, and the State. Following the pre-certification inspection, if EPA determines that the supplemental landfill side slope cap has been fully constructed in accordance with the EPA-approved Remedial Design, EPA will so notify the Owner Settling Defendant in writing, with copies to Non-owner Settling Defendants. After receipt of this notice, the Owner Settling Defendant shall submit a Draft Remedial Action Report, as described in the SOW, and prepared by a professional engineer licensed in the State of New York, certifying that the construction has been completed in full satisfaction of the terms of this Consent Decree.

(ii) If, after the pre-certification inspection, EPA determines that any element of the construction of the supplemental

landfill side slope cap has not been completed in accordance with this Consent Decree, EPA will notify Owner Settling Defendant in writing of the activities that must be undertaken by Owner Settling Defendant pursuant to this Consent Decree to complete construction. Owner Settling Defendant will perform all such activities necessary to complete construction and following such completion will schedule a reinspection of the supplemental landfill side slope cap to be attended by Owner Settling Defendant, EPA, and the State. Provided, however, that EPA may only require Owner Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD, as modified" as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require the Owner Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Owner Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

(iii) After EPA concludes that the Owner Settling Defendant has completed construction of the supplemental landfill side slope cap in accordance with the EPA-approved Remedial Design, it shall so notify Owner Settling Defendant in writing, with copies to the Non-owner Settling Defendants, and the Owner Settling

Defendant shall submit a Draft Remedial Action Report as required in the SOW. The report shall contain the following statement, signed by a responsible official of a Owner Settling Defendant or the Owner Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

b. Completion of Remedial Work Element II

(i) The Owner Settling Defendant shall submit the draft Groundwater Extraction Contingency Plan to EPA pursuant to Section VI.A.12 of the SOW. If the draft Groundwater Extraction Contingency Plan concludes, and EPA concurs, that operation of the groundwater extraction system is not required, EPA shall so notify Owner Settling Defendant in writing, with copies to Non-Owner Settling Defendants, and EPA's acceptance of the Groundwater Extraction Contingency Plan will complete Remedial Work Element II.

(ii) If the draft Groundwater Extraction Contingency Plan concludes that the operation of the groundwater extraction system is required, then the Groundwater Extraction Contingency Plan and such groundwater extraction system shall become Remedial Work Element II. Within 90 days after the Groundwater Extraction Contingency Plan is approved pursuant to the Remedial Design Work Plan and the groundwater extraction system is operating, Owner

Settling Defendant and its contractor(s) shall schedule and conduct a pre-certification inspection in accordance with the requirements of the SOW (Appendix B), to be attended by Owner Settling Defendant and EPA personnel or their representatives. If, after the pre-certification inspection, the Owner Settling Defendant still believes that the groundwater extraction system is operating in accordance with the methodology in the Remedial Design Work Plan, it shall submit a written report by a registered professional engineer stating that this system has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible official of the Owner Settling Defendant or the Owner Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the groundwater extraction system has not been completed, or is not operational, in accordance with this Consent Decree, EPA will notify Owner Settling Defendant in writing of the activities that must be undertaken by Owner Settling Defendant pursuant to this Consent Decree. Provided, however, that EPA may only require Owner Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD, as

modified" as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require the Owner Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Owner Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

c. Completion of the Work

(i) Within 90 days after Owner Settling Defendant concludes that all phases of the Work (including O & M), have been fully performed, and all Performance Standards have been attained, Owner Settling Defendant shall schedule and conduct a pre-certification inspection to be attended by Owner Settling Defendant and EPA. If, after the pre-certification inspection, the Owner Settling Defendant still believes that the Work has been fully performed, Owner Settling Defendant shall submit a Completion of Work report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a responsible official of Owner Settling Defendant or the Owner Settling Defendant's Project Coordinator:

"To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Owner Settling Defendant in writing of the activities that must be undertaken by Owner Settling Defendant pursuant to this Consent Decree to complete the Work. Provided, however, that EPA may only require Owner Settling Defendant to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the "scope of the remedy selected in the ROD, as modified" as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities or require the Owner Settling Defendant to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Owner Settling Defendant shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to its right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution). Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

(ii) If EPA concludes, based on the initial or any subsequent

request for certification of completion by Owner Settling Defendant and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Owner Settling Defendant in writing, with copies to Non-owner Settling Defendants.

XV. EMERGENCY RESPONSE

48. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Owner Settling Defendant shall, subject to Paragraph 49, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Owner Settling Defendant shall notify the Chief of the Response and Prevention Branch, EPA Region II, at (732) 321-6656. Owner Settling Defendant shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to the SOW. In the event that Owner Settling Defendant fails to take appropriate response action as required by this Section, and EPA takes such action instead, Owner Settling Defendant shall reimburse EPA for all costs of the

response action not inconsistent with the MCP pursuant to Section XVI (Reimbursement of Response Costs).

49. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States a) to take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or b) to direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. REIMBURSEMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGES

50. a. Within forty-five (45) days of the effective date of this Consent Decree, the private party Non-owner Settling Defendants shall make all payments required by the agreement between Owner Settling Defendant and the private party Non-owner Settling Defendants referenced in subparagraph 6.c., above. Within three years of the effective date of this Consent Decree, the governmental Non-owner Settling Defendants shall make all payments required by the agreement between Owner Settling Defendant and the governmental Non-owner Settling Defendants referenced in subparagraph 6.c., above. These payments will be used exclusively for performance of the Work, reimbursement to the United States for Past Response Costs and Future Response Costs, and payment of Natural Resource Damages, all as required by this Consent Decree.

b. Within sixty (60) days of the effective date of this Consent Decree, the Owner Settling Defendant shall pay to the United States \$7,500 for Natural Resource Damages for the costs of assessing injuries to trust resources from the Source Control Operable Unit, and the involvement of the United States Department of Interior in the oversight of the upland habitat restoration project (side slope cap planting). The payment of \$7,500 for Natural Resource Damages shall be in the form of a certified check made payable to the "U.S. Department of the Interior," and referencing Account Number 14X5198 and the name of the Site, the Volney Municipal Landfill Superfund Site. Owner Settling Defendant shall forward the certified check by certified mail, return receipt requested to:

Chief, Division of Finance
U.S. Fish and Wildlife Service
4401 North Fairfax Drive
Arlington, Virginia 22203

with a copy to:

Mark Barash
Office of the Regional Solicitor
United States Department of the Interior
One Gateway Center, Suite 612
Newton Corner, MA 02158-2868

and shall reference that the payment is for Natural Resource Damages for resources under the trusteeship of the Department of

the Interior with respect to the Source Control Operable Unit of the Volney Landfill Superfund Site. A copy of the check paid pursuant to this subparagraph, and any accompanying transmittal letter, shall be sent to the United States as provided in Section XXVI, (Notices and Submissions).

c. The Settling Defendants have agreed to reimburse \$1,800,000 in Past Response Costs to the EPA Hazardous Substance Superfund in full settlement of the claim for Past Response Costs. This \$1,800,000 payment will be made within 60 days of the effective date of this Consent Decree by Owner Settling Defendant on behalf of all Settling Defendants pursuant to the agreements among the Settling Defendants referenced in subparagraph 6.c., above.

d. The payment pursuant to subparagraph c. shall be made by FedWire Electronic Funds Transfer ("EFT" or wire transfer) to the U.S. Department of Justice account in accordance with current electronic funds transfer procedures, referencing U.S.A.O. file number, 198V00623, EPA Region II and Site/Spill ID NYD980509376-02CE, and DOJ case number 90-11-3-268A. Payment shall be made in accordance with instructions provided to the Owner Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the Northern District of New York following lodging of the Consent Decree. Any payment received by the Department of Justice after 4:00 P.M. (Eastern Time) will be credited on the next business day. Owner Settling Defendant shall send notice that such payment has been made to the United States as

specified in Section XXVI (Notices and Submissions) to:

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

51. a. Owner Settling Defendant shall reimburse the EPA Hazardous Substance Superfund for all Future Response Costs not inconsistent with the National Contingency Plan. The United States will periodically send Owner Settling Defendant billings for such costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Owner Settling Defendant shall make all payments within 30 days of the date of each bill requiring payment, except as otherwise provided in Paragraph 52. The Owner Settling Defendant shall make all payments required by this Paragraph via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as follows:

To make payment via EFT, Owner Settling Defendant shall provide the following information to its bank:

- . Amount of payment
- . Title of Mellon Bank account to receive the payment: **EPA**
- . Account code for Mellon Bank account receiving the payment:
9108544
- . Mellon Bank ABA Routing Number: **043000261**
- . Name of Owner Settling Defendant
- . Case number: 02-90-0379
- . Site/spill identifier: NYD980509376-02CE

Along with this information, Owner Settling Defendant shall instruct its bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank.

To ensure that Owner Settling Defendant's payment is properly recorded, Owner Settling Defendant shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the name of the site, and the case number to:

Richard L. Caspe, P.E., Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway
19th Floor
New York, N.Y. 10007-1866

as well as to:

George A. Shanahan
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

and

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

52. Owner Settling Defendant may contest payment of any Future Response Costs under Paragraph 51 if it determines that the United States has made a mathematical error or if it alleges that a cost item that is included represents costs that are inconsistent with the NCP. Such objection shall be made in writing within 30 days of

the date of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Owner Settling Defendant shall within the 30 day period pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 51. Simultaneously, the Owner Settling Defendant shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of New York and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Owner Settling Defendant shall send to the United States, as provided in Section XXVI (Notices and Submissions), a copy of the letter describing the payment by EFT of the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Owner Settling Defendant shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within 5 days of the resolution of the dispute, the Owner Settling Defendant shall pay the sums due, with accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in

Paragraph 51. If the Owner Settling Defendant prevails concerning any aspect of the contested costs, the Owner Settling Defendant shall pay that portion of the costs for which it did not prevail, plus associated accrued interest (as shown by a bank statement, a copy of which shall be submitted with the payment), to the United States in the manner described in Paragraph 51; Owner Settling Defendant shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Owner Settling Defendant's obligation to reimburse the United States for its Future Response Costs.

53. In the event that the payments required by Paragraph 50 are not made by the respective due dates for such payments or the payments required by Paragraph 51 are not made within 30 days of the date of each bill, Owner Settling Defendant shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill (but, as provided above, such interest shall not be payable if the payment is made within 30 days of the billing date). The Interest shall accrue through the date of the Owner Settling Defendant's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Owner Settling Defendant's failure to make timely payments under this Section. The Owner Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 51.

XVII. INDEMNIFICATION AND INSURANCE

54. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Owner Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Owner Settling Defendant shall indemnify, save and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Owner Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Owner Settling Defendant as EPA's authorized representative under Section 104(e) of CERCLA. Further, the Owner Settling Defendant agrees to reimburse the United States for all costs it incurs (including, but not limited to, attorneys fees and other expenses of litigation and settlement) arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Owner Settling Defendant, its officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Owner Settling Defendant in carrying out activities

pursuant to this Consent Decree. Neither the Owner Settling Defendant nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Owner Settling Defendant notice of any claim for which the United States plans to seek indemnification pursuant to Paragraph 54.a., and shall consult with Owner Settling Defendant prior to settling such claim.

55. Owner Settling Defendant waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Owner Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Owner Settling Defendant shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Owner Settling Defendant and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

56. No later than 15 days before commencing any on-site Work, Owner Settling Defendant shall submit to EPA documentation demonstrating that its contractors and/or subcontractors maintain, and are required by contract to continue to maintain until EPA's acceptance pursuant to Paragraph 47 above of the Work to be performed, comprehensive general liability insurance with limits of

five million dollars, combined single limit, and automobile liability insurance with limits of two million dollars, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Owner Settling Defendant shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Owner Settling Defendant in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Owner Settling Defendant shall ensure that its contractors and/or subcontractors provide to EPA certificates of such insurance and a copy of each insurance policy. Owner Settling Defendant shall ensure that its contractors and/or subcontractors resubmit such certificates and copies of policies each year on the anniversary of the effective date of this Consent Decree.

XVIII. FORCE MAJEURE

57. "Force majeure," for purposes of this Consent Decree, is defined as any event or circumstance arising from causes beyond the control of the Owner Settling Defendant, of any entity controlled by Owner Settling Defendant, or of Owner Settling Defendant's contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Owner Settling Defendant's best efforts to fulfill the obligation. The requirement that the Owner Settling Defendant exercises "best efforts to fulfill the obligation" includes using best efforts to

anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (1) as it is occurring and (2) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work or a failure to attain the Performance Standards.

58. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Owner Settling Defendant shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Chief of the New York Remediation Branch, Emergency and Remedial Response Division, EPA Region II, within 48 hours of when Owner Settling Defendant first knew that the event might cause a delay. Within 5 days thereafter, Owner Settling Defendant shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Owner Settling Defendant's rationale for attributing such delay to a force majeure event if it intends to assert such a claim; and a statement as to whether, in the opinion of the Owner Settling Defendant, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Owner Settling Defendant shall

include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Owner Settling Defendant from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. The Owner Settling Defendant shall be deemed to know of any circumstance of which Owner Settling Defendant, any entity controlled by Owner Settling Defendant, or Owner Settling Defendant's contractors knew or should have known.

59. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations, taking into account the time necessary to resume activities. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Owner Settling Defendant in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Owner Settling Defendant in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

60. If the Owner Settling Defendant elects to invoke the dispute

resolution procedures set forth in Section XIX (Dispute Resolution), it shall do so no later than 15 days after receipt of EPA's notice under the preceding paragraph. In any such proceeding, Owner Settling Defendant shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Owner Settling Defendant complied with the requirements of Paragraphs 57 and 58, above. If Owner Settling Defendant carries this burden, the delay at issue shall be deemed not to be a violation by Owner Settling Defendant of the affected obligations of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

61. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. Non-owner Settling Defendants may be a party to a dispute only with respect to issues concerning which they have a direct responsibility pursuant to this Consent Decree. Owner Settling Defendant may be a party to any dispute concerning this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

62. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 working days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

63. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within 10 working days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 64 or Paragraph 65.

b. Within 14 days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by EPA. EPA's Statement of

Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 64 or 65. Within 14 days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 64 or 65, the parties to the dispute shall follow the procedures set forth in the paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 64 and 65.

64. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions or the appropriateness of the ROD remedy.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Emergency and Remedial Response Division ("ERRD"), EPA Region II, will issue a final administrative decision resolving the dispute based on the administrative record described in Paragraph 64.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 64.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 64.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within 10 days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the ERRD Director is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record

compiled pursuant to Paragraph 64.a.

65. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 63, the ERRD Director, EPA Region II, will issue a final decision resolving the dispute. The ERRD Director's decision shall be binding on the Settling Defendants unless, within 10 days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph R of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

66. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed

matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 74. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

67. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 68 and 69 to the United States for failure to comply with the requirements of this Consent Decree that are applicable to each of them, respectively, unless excused under Section XVIII (Force Majeure). "Compliance" by Settling Defendants shall include performance and completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified below in accordance with all applicable requirements of law, this Consent Decree, the SOW, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

68. a. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements of this Consent Decree, except as set forth in Subparagraph 68.c., below:

Penalty Per Violation
Per Day

Period of Noncompliance

\$ 4,000

1st through 14th day

\$ 8,000

15th through 30th day

\$16,000

31st day and beyond

b. The following stipulated penalties shall accrue per violation per day for any noncompliance with the requirements identified in subparagraph c:

Penalty Per Violation
Per Day

Period of Noncompliance

\$ 1,500

1st through 14th day

\$ 3,000

15th through 30th day

\$ 5,000

31st day and beyond

c. Stipulated penalties shall accrue pursuant to Subparagraph 68.b. for failure to comply with the requirements of Section VIII (Quality Assurance, Sampling, and Data Analysis), and failure to submit timely or adequate reports pursuant to Paragraph 28. No stipulated penalties are provided herein for failure to retain records pursuant to Paragraph 93.

69. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 79 of Section XXI (Covenants Not to Sue by Plaintiff), Owner Settling Defendant shall be liable for a stipulated penalty in the amount of \$400,000.

70. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However,

stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Owner Settling Defendant of any deficiency; (2) with respect to a decision by the Director of the Emergency and Remedial Response Division, EPA Region II, under Paragraph 64.b. or 65.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Owner Settling Defendant's reply to EPA's Statement of Position is received until the date that the Director issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

71. Following EPA's determination that Owner Settling Defendant or Non-owner Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give such Defendants written notification of the same and describe the noncompliance. EPA may send such Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Owner Settling Defendant or Non-owner Settling Defendants of a

violation.

72. All penalties accruing under this Section shall be due and payable to the United States within 30 days of the date of EPA's demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be remitted via EFT to Mellon Bank, Pittsburgh, Pennsylvania, as follows:

To make payment via EFT, Settling Defendants shall provide the following information to their bank:

- . Amount of payment
- . Title of Mellon Bank account to receive the payment: **EPA**
- . Account code for Mellon Bank account receiving the payment:
9108544
- . Mellon Bank ABA Routing Number: **043000261**
- . Name of Settling Defendants
- . Case number: 02-90-0379
- . Site/spill identifier: NYD980509376-02CE

Along with this information, Settling Defendants shall instruct their bank to remit payment in the required amount via EFT to EPA's account with Mellon Bank.

To ensure that Settling Defendants' payment is properly recorded, Settling Defendants shall send a letter, within one week of the EFT, which references the date of the EFT, the payment amount, the

name of the site, and the case number to:

Richard L. Caspe, P.E., Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II
290 Broadway
19th Floor
New York, N.Y. 10007-1866

as well as to:

George A. Shanahan
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency
Region II
290 Broadway, 17th Floor
New York, N.Y. 10007-1866

and

Ronald Gherardi, Chief
Financial Management Branch
U.S. Environmental Protection Agency
Region II
290 Broadway
New York, NY 10007-1866

73. The payment of penalties shall not alter in any way Owner Settling Defendant's obligation to complete the performance of the Work required under this Consent Decree.

74. Penalties shall continue to accrue as provided in Paragraph 70 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined or agreed to be owing shall be paid to EPA within 15 days of the agreement or the date of EPA's decision or order.

b. If the dispute is appealed to this Court and the United

States prevails in whole or in part, Owner Settling Defendant shall pay all accrued penalties determined by the Court to be owed to EPA within 60 days of receipt of the Court's decision or order, except as provided in subparagraph c. below.

c. If the District Court's decision is appealed by any Party, Owner Settling Defendant shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within 60 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 60 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Owner Settling Defendant to the extent that it prevails.

75. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 71 (said interest is not payable, however, if the balance is timely paid pursuant to the provisions of Paragraph 72 or 74, as applicable).

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(1) of CERCLA.

Provided, however, that the United States shall not seek civil penalties pursuant to Section 122(1) of CERCLA for any violation for which a stipulated penalty is provided herein, except in the case of a willful violation of the Consent Decree.

76. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

77. a. In consideration of the actions that will be performed and the payments that will be made by the Owner Settling Defendant and the payments that will be made by the Non-owner Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 78 and 80 of this Section, the United States covenants not to sue or to take administrative action against Settling Defendants: (1) pursuant to Sections 106 and 107(a) of CERCLA for performance of the Work and for recovery of Past Response Costs and Future Response Costs; and (2) for any claim by Trustee for Natural Resource Damages pursuant to Section 107 of CERCLA or any other provisions of law with respect to the Source Control Operable Unit at the Site. These covenants not to sue or take administrative action against Settling Defendants shall take effect, respectively, upon the receipt by the United States Department of Justice of the payment required by subparagraph 50.c. and upon the receipt by the U.S. Fish and Wildlife Service of the payment required by subparagraph 50.b. of Section XVI

(Reimbursement of Response Costs and Natural Resource Damages). These covenants not to sue with respect to Owner Settling Defendant are conditioned upon the satisfactory performance by Owner Settling Defendant of its obligations under this Consent Decree. These covenants not to sue with respect to Non-owner Settling Defendants are conditioned upon the satisfactory performance by Non-owner Settling Defendants of their respective obligations under this Consent Decree. These covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

b. Notwithstanding the obligation of the Owner Settling Defendant to perform the Work required by this Consent Decree, the United States reserves all rights to seek or require, in this action or in a separate civil or administrative action, that Non-owner Settling Defendants perform the Work. The United States agrees that it will only exercise its rights under this provision after having made all reasonable efforts to seek performance by Owner Settling Defendant and only until such time as EPA issues its notification pursuant to subparagraph 47.a. that construction of the supplemental capping of the landfill side slopes as set forth in the ROD, as amended, has been completed. Following EPA's notification pursuant to subparagraph 47.a. that the construction of the supplemental capping of the landfill side slopes has been completed, the United States can seek performance of any remaining Work required by this Consent Decree only from Owner Settling Defendant; provided that this sentence should not be construed to affect or limit the additional reservations contained in Paragraph

78, below.

78. General reservations of rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 77. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all other matters, including but not limited to, the following:

(1) claims based on a failure by Settling Defendants to meet a requirement of this Consent Decree;

(2) claims seeking, or liability for, the securing and implementation of Supplemental Institutional Controls, and liability for any response costs incurred relating to the implementation or securing of Supplemental Institutional Controls;

(3) liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Site;

(4) liability for future disposal of Waste Material at the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA;

(5) liability for damages for injury to, destruction of, or loss of natural resources for which NOAA or any other federal agency other than DOI is trustee, and for the costs of any natural resource assessments by that agency;

(6) criminal liability;

(7) liability for violations of federal or state law which

occur during or after implementation of the Remedial Action;

(8) liability, prior to Certification of Completion of the Remedial Action, for additional response actions that EPA determines are necessary to achieve Performance Standards, but that cannot be required pursuant to Paragraph 14 (Modification of the SOW or Related Work Plans);

(9) liability for additional operable units at the Site;
and

(10) liability for costs that the United States will incur related to the Site but are not within the definition of Future Response Costs.

79. Work Takeover In the event EPA determines that Owner Settling Defendant has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. Owner Settling Defendant may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 64, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Owner Settling Defendant shall pay pursuant to Section XVI (Reimbursement of Response Costs).

80. Notwithstanding any other provision of this Consent Decree, the United States on behalf of its natural resource trustees, reserves the right to institute proceedings against the Settling Defendants in a new action seeking recovery of natural resource damages with respect to the Contamination Pathways Operable Unit, or any other operable unit other than the Source Control Operable Unit. The United States further reserves the right to institute proceedings against the Settling Defendants in this action or in a new action seeking recovery of natural resource damages, based on conditions with respect to the Source Control Operable Unit, unknown to the United States at the date of lodging of this Consent Decree, that result in releases of hazardous substances that contribute to injury to, destruction of, or loss of natural resources, or information received after the date of lodging of the Consent Decree which together with other relevant information indicates that there is injury to, destruction of, or loss of natural resources, of a type that was unknown, or of a magnitude greater than was known to the United States at the date of lodging of this Consent Decree.

81. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

82. Covenant Not to Sue. Subject to the reservations in Paragraph 83, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to: the Work, past response actions, and Past and Future Response Costs as defined herein or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA Sections 106(b)(2), 107, 111, 112, 113 or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site; or

c. any claims arising out of response activities at the Site, including claims based on EPA's selection of response actions, oversight of response activities or approval of plans for such activities.

83. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his office or employment under circumstances where the United

States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Owner Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

84. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT: CONTRIBUTION PROTECTION

85. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

86. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the effective date of this Consent Decree, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. For purposes of the preceding sentence, the "matters addressed in this Consent Decree" are Past and Future Response Costs; the Work as defined in this Consent Decree; Natural Resource Damages; the Supplemental Pre-Remedial Design Study conducted pursuant to EPA Administrative Order No. II-CERCLA-104-93-0202; and the preparation of the Contamination Pathways Remedial Investigation Work Plan pursuant to EPA Administrative Order No. II-CERCLA-00218, including all revisions to such Work Plan through the date of lodging of this Consent Decree.

87. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

88. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within 10 days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court

setting a case for trial.

89. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

90. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Owner Settling Defendant shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

91. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

a. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent

Decree shall be withheld on the grounds that they are privileged.

92. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

93. Until 10 years after the Owner Settling Defendant's receipt of EPA's notification pursuant to Paragraph 47.c. of Section XIV (Certification of Completion of the Work), each Owner Settling Defendant and Non-owner Settling Defendant shall preserve and retain all records and documents now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or liability of any person for response actions conducted and to be conducted at the Site, regardless of any corporate retention policy to the contrary. Until 10 years after the Owner Settling Defendant's receipt of EPA's notification pursuant to Paragraph 47.c. of Section XIV (Certification of Completion), Owner Settling Defendant shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to the performance of the Work.

94. At the conclusion of this document retention period, Settling Defendant shall notify the United States at least 90 days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall

deliver any such records or documents to EPA. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

95. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e), and Section 3007 of RCRA, 42 U.S.C. 6927.

XXVI. NOTICES AND SUBMISSIONS

96. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided herein. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, and the Settling Defendants, respectively.

As to the United States or EPA:

Seven (7) copies of all work plans, design documents, and technical reports and one (1) copy of all required written communications shall be sent to:

Chief, Central New York Remediation Section
Emergency and Remedial Response Division
U.S. Environmental Protection Agency, Region II
290 Broadway, 20th Floor
New York, NY 10007-1866
Attention: Jack O'Dell
Volney Landfill Superfund Site
Remedial Project Manager

One copy of all required written communications other than work plans, design documents and technical reports shall also be sent to each of the following individuals:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
290 Broadway, 17th Floor
New York, NY 10007-1866
Attention: Volney Landfill Superfund Site Attorney

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O.Box 7611
Ben Franklin Station
Washington, D.C. 20044
Re: DOJ # 90-11-3-268A

As to the State:

When submitting to EPA any written communication required hereunder, Settling Defendants shall simultaneously submit one (1) copy of that communication (unless the given document is a plan or report, in which case four (4) copies shall be submitted) to:

Director, Division of Environmental Remediation
New York State Department of Environmental Conservation
50 Wolf Road, Room 222
Albany, NY 12233-7010
Attention: Volney Landfill Site Project Manager

One (1) copy of all plans or reports shall also be sent to:

Director, Bureau of Environmental Exposure Investigation
New York State Department of Health
2 University Place
Albany, NY 12203

and to:

Regional Hazardous Waste Remediation Engineer
New York State Department of Environmental Conservation
615 Erie Boulevard West
Syracuse, NY 13204-2400

As to Owner Settling Defendant:

Bruce N. Clark, Esq.
County Attorney
Oswego County Office Building
46 East Bridge Street
Oswego, New York 13126

XXVII. EFFECTIVE DATE

97. The effective date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

98. a. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

b. The parties stipulate that this Court has jurisdiction over the subject matter of this action and over any and all agreements made between and among the Owner Settling Defendant and the governmental and private party Non-owner Settling Defendants relating to this action. Settling Defendants waive all objections and defenses they may have to the exercise of personal jurisdiction over them by this Court or to venue in this District with respect to such agreements.

XXIX. APPENDICES

99. The following appendices are attached to and incorporated into this Consent Decree:

"Appendix A" is the ROD.

"Appendix B" is the SOW.

"Appendix C" is the description and/or map of the Site.

"Appendix D" is the complete list of the Non-owner Settling Defendants.

"Appendix E" is the complete list of the Owner Settling Defendant.

"Appendix F" is the PDD.

"Appendix G" is the ESD.

XXX. COMMUNITY RELATIONS

100. Owner Settling Defendant shall propose to EPA its participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Owner Settling Defendant under the Plan. Owner Settling Defendant shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Owner Settling Defendant shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

101. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of EPA and the Owner

Settling Defendant. All such modifications shall be made in writing.

102. Except as provided in Paragraph 14 ("Modification of the SOW or related Work Plans"), no material modifications shall be made to the SOW without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the SOW that do not materially alter that document may be made by written agreement between EPA, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Owner Settling Defendant.

103. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

104. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

105. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

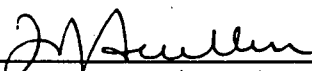
106. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for Environment and Natural Resources of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

107. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

108. Each Settling Defendant shall identify, on the attached signature page, the name, address and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any

applicable local rules of this Court, including, but not limited to, service of a summons.

SO ORDERED THIS 9 DAY OF oct, 1998.


United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. County of Oswego, et al., relating to the Volney Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA

Date: June 14, 1998

Lois J. Schiffer
LOIS J. SCHIFFER
Assistant Attorney General
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

Jerome W. MacLaughlin
JEROME W. MACLAUGHLIN
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources
Division
U.S. Department of Justice
Washington, D.C. 20530

THOMAS J. MARONEY
United States Attorney
for the Northern District
of New York

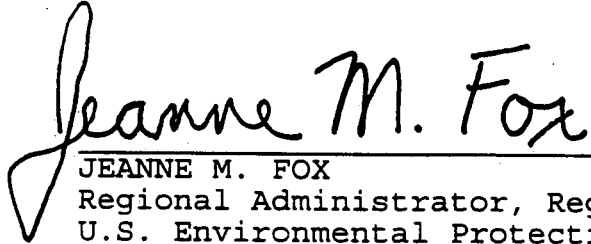
Date: 7/1/98

James C. Woods
JAMES C. WOODS
Assistant United States Attorney
Office of the United States Attorney
for the Northern District of
New York
45 Broadway, Room 231
Albany, New York 12207

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. County of Oswego, et al., relating to the Volney Landfill Superfund Site.

FOR THE UNITED STATES OF AMERICA
(CONTINUED)

Date: 5/7/98

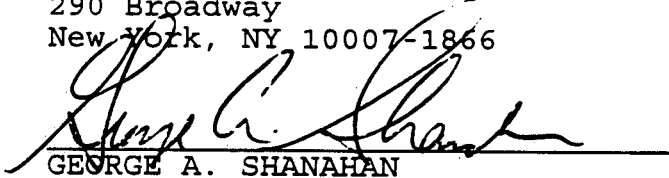


JEANNE M. FOX

Regional Administrator, Region II
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Assistant Regional Counsel
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APPENDIX D

NON-OWNER SETTling DEFENDANTS

A. GOVERNMENTAL PARTY NON-OWNER SETTling DEFENDANTS

- ✓ 1. Oswego Valley Solid Refuse Disposal District
- ✓ 2. City of Fulton
- ✓ 3. Village of Phoenix
- ✓ 4. Town of Granby
- ✓ 5. Town of Schroepel
- ✓ 6. Town of Volney

B. PRIVATE PARTY NON-OWNER SETTling DEFENDANTS

- ✓ 7. Armstrong World Industries, Inc.
- ✓ 8. Miller Brewing Company
- ✓ 9. Alcan Aluminum Corporation
- ✓ 10. International Paper Company
- ✓ 11. Owens-Brockway Glass Container Inc.
- ✓ 12. The Black Clawson Company
- ✓ 13. AlliedSignal Inc.
- ✓ 14. American National Can Company
- ✓ 15. American Standard, Inc.
- ✓ 16. AMF, Inc.
- ✓ 17. Ashland Chemical Company, Division of Ashland Inc.
- ✓ 18. Boise Cascade Corp.
- ✓ 19. Charles W. Breneman Company
- ✓ 20. Bristol-Myers Squibb Company
- ✓ 21. BCE/CH Holdings Corp. formerly known as The Case-Hoyt Corporation
- ✓ 22. Champion International Corporation
- 23. Shell Oil Company

Janice,
I sent you
this by LAN-Mail
in case you
can input it
into DOCKET
electronically
George

APPENDIX D continued

- ✓24. E.I. du Pont de Nemours and Company
- ✓25. Floquil Polly S Color Corporation
- ✓26. GAF Corporation and its present and former subsidiaries, G-I Holdings Inc., International Specialty Products Inc., and G Industries Corp.
- ✓27. General Electric Company
- ✓28. Jones Chemicals, Inc.
- ✓29. Masonite Corporation
- ✓30. Hasbro, Inc. (for Milton Bradley)
- ✓31. Monsanto Company
- ✓32. Sonoco Flexible Packaging, Inc. f.k.a. Engraph, Inc. a.k.a. Morrill Press
- ✓33. Niagara Mohawk Power Corporation
- ✓34. Pfizer, Inc.
- ✓35. Revere Ware Corporation
- ✓36. Rotron, Inc.
- ✓37. Schenectady International, Inc.
- ✓38. Sealright Manufacturing Fulton, Inc.
- ✓39. State University of New York

APPENDIX E

OWNER SETTling DEFENDANT

✓1. County of Oswego